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PRICE-ANDERSON AMENDMENTS ACT OF 1986

53

SEPTEMBER 9, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

together with ORIGINAL

DISSENTING AND ADDITIONAL VIEWS

[To accompany H.R. 3653]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3653) to amend the Price-Anderson provisions of the Atomic Energy Act of 1954 to extend and improve procedures for liability and indemnification for nuclear incidents, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Price-Anderson Amendments Act of 1986".

SEC. 2. FINANCIAL PROTECTION.

(a) PRIMARY FINANCIAL PROTECTION AMOUNT REQUIRED FOR LARGE ELECTRICAL GENERATING FACILITIES.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended—

(1) by inserting "primary" before "financial protection" the first, second, third, and sixth places it appears; and

(2) by inserting before the period at the end of the proviso in the first sentence the following: "(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection)".

(b) STANDARD DEFERRED PREMIUM AMOUNT.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended in the second proviso of the third sentence, by striking "That" and all that follows through "protection" and inserting the following: "That the standard deferred premium that may be charged following

any nuclear incident under such a plan shall not be more than $63,000,000 (but not more than $10,000,000 in any 1 year) for each facility required to maintain the maximum amount of primary financial protection".

(c) BORROWING AUTHORITY.—Section 170 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) in the first sentence, by redesignating clauses (1) through (3) as clauses (A) through (C), respectively;

(3) by striking the fifth and sixth sentences;

(4) by inserting "(2)" before the penultimate sentence and redesignating the penultimate and last sentences as a paragraph (2); and

(5) by adding at the end the following new paragraph:

"(3)(A) In the event that, the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1), or the Commission is required to make reinsurance or guaranteed payments under paragraph (2), the Commission shall, in order to advance the necessary funds—

"(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

"(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

"(B)(i) Except as provided in clause (ii), any funds appropriated pursuant to subparagraph (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premiums, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated are made available.

"(ii) No amount shall be repaid under clause (i) from standard deferred premium amounts until the Commission has exhausted any applicable remedies under paragraph (2) and has been unable to obtain full reimbursement for any funds appropriated under subparagraph (A)(i).

"(C)(i) Except as provided in clause (ii), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premiums. Such obligations shall bear interest at a rate determined by the Commission by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

"(ii) No redemption under clause (i) of obligations issued under subparagraph (A)(ii) shall be made from standard premium amounts until the Commission has exhausted any applicable remedies under paragraph (2) and has been unable to obtain full reimbursement for any such obligations.".

SEC. 3. INDEMNIFICATION AGREEMENTS FOR LICENSEES OF NUCLEAR REGULATORY COMMISSION.

Section 170 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 1997".

SEC. 4. INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDERTAKEN UNDER CONTRACT WITH THE DEPARTMENT OF ENERGY.

(a) IN GENERAL.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended to read as follows:

"d. (1)(A) In addition to any other authority the Secretary of Energy (in this subsection referred to as the 'Secretary') may have, the Secretary shall, until August 1, 1997, enter into agreements of indemnification with contractors of the Department of Energy for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activi-

ties that involve the risk of public liability for a substantial nuclear incident or precautionary evacuation.

"(B)(i)(I) The requirement in subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out—

"(aa) such activities as the Secretary is authorized to undertake, under this Act or any other law, involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste;

"(bb) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164; or

"(cc) the construction or operation of any storage or disposal site or facility.

"(II) For all activities described in subclause (I), indemnification under subparagraph (A) shall be the exclusive means of indemnification under this section.

"(III) In any such agreement of indemnification, the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity, authorized in subsection n. (1) to be incorporated in agreements of indemnification shall also be made applicable to nuclear incidents involving the release of radioactive material arising out of the activities described in subclause (I).

"(ii) For the purpose of compensating public liability claims, as defined in section 11 w., arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility, the Secretary shall make available funds, in an amount not to exceed the maximum amount of financial protection required of licensees under subsection a., from the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222). Any liability greater than such amount shall be compensated in accordance with clause (iii).

"(iii)(I) The Secretary shall compensate the public liability claims described in subclause (II) unless an alternative compensation plan submitted by the President to Congress under subsection i. (2)(C) is implemented.

"(II) The public liability claims referred to in subclause (I) are as follows:

"(aa) Claims arising out of activities described in subparagraph (A).

"(bb) Claims arising out of activities (other than those described in clause (ii)) involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste.

"(cc) Claims arising out of activities described in clause (ii) for which the public liability exceeds the maximum amount of financial protection required of licensees under subsection a.

"(dd) Claims arising out of activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164.

"(ee) Claims arising out of the construction or operation of any storage or disposal site or facility.

"(III) For purposes of paying the compensation described in subclause (I), the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this clause. The Secretary of the Treasury shall purchase any issued obligation, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any obligation required by the Secretary of the Treasury under this clause. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this clause shall be treated as public debt transactions of the United States.

"(iv)(I) In the event of a nuclear incident that arises out of, results from, or occurs in the course of, activities undertaken by the Secretary in connection with the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall determine the extent to which such incident involves materials pro-

duced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating public liability claims.

"(II) The funds to be used to compensate public liability claims under this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered under subclause (I). The decision on the sources of such funds shall be final and conclusive. Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

"(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the potential aggregate liability of the contractor, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. This amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

"(3) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection a. The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

"(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

"(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

"(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.".

(b) LIABILITY FOR NONCONTRACTURAL ACTIVITIES OF SECRETARY OF ENERGY.—

(1) Section 11 s. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(s)) is amended by adding at the end the following new sentence: "For purposes of activities that the Secretary of Energy is authorized or directed to undertake, under this Act or any other law, that involve the risk of public liability for a substantial nuclear incident or precautionary evacuation, including the construction or operation of production or utilization facilities, the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom an indemnity agreement has been entered into under section 170 d.".

(2) Section 11 t. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)(1)) is amended by inserting after "and any other person" the following: ", as defined in subsection s.,".

(c) DEFINITIONS.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) is amended by adding at the end the following new subsections:

"dd. The terms 'high-level radioactive waste' and 'spent nuclear fuel' have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

"ee. The term 'transuranic waste' means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.".

SEC. 5. THEFT OR SABOTAGE OF RADIOACTIVE MATERIAL.

(a) FEDERAL LIABILITY.—Section 170 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)), as amended by section 4 of this Act, is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall compensate public liability claims arising out of or in connection with a nuclear incident (other than a nuclear incident arising out of an Act of war or a hostile act by a foreign agent) resulting from source material, special nuclear material, byproduct material, high-level radioactive waste, and spent nuclear fuel that—

"(A) is illegally diverted from its intended place of confinement; and

"(B) cannot be traced to a licensee of the Commission required to maintain financial protection under this section.".

(b) EXTRAORDINARY NUCLEAR OCCURRENCES.—Section 11 j. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(j)) is amended by inserting after "confinement" the following: "(including any such material that is illegally diverted from its intended place of confinement)".

(c) DEFINITION OF NUCLEAR INCIDENT.—Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by inserting after "byproduct material" the first place it appears the following: "(including such material that is illegally diverted from its intended place of confinement)".

SEC. 6. PRECAUTIONARY EVACUATIONS.

(a) COSTS INCURRED BY STATE GOVERNMENTS.—Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by inserting after "nuclear incident" the first place it appears the following: "or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation)".

(b) DEFINITION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"ff. The term 'precautionary evacuation' means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

"(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

"(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation.".

(c) RULE OF CONSTRUCTION.—The amendments made by this section shall not be construed to authorize the award of precautionary evacuation costs that do not constitute a public liability (as such term is defined in section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)).

SEC. 7. AGGREGATE LIABILITY FOR SINGLE NUCLEAR INCIDENT.

Section 170 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(e)) is amended to read as follows:

"e. (1) The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall be as follows:

"(A) In the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, such liability shall not exceed the maximum amount of financial protection required of such facilities under subsection b.

"(B) In the case of all other licensees of the Commission required to maintain financial protection under this section such liability shall not exceed—

"(i) $500,000,000, together with the amount of financial protection required of the licensee; or

"(ii) if the amount of financial protection required of the licensee exceeds $63,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

"(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability under paragraph (1), and in the event of a nuclear incident involving persons indemnified under subsection d. (1)(B) in which claims exceed the maximum amount of funds available under subsection d. (1)(B)(ii), the Congress will thoroughly review the particular incident in accordance with subsection i. and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

"(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

"(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.".

SEC. 8. COMPENSATION PLANS.

Section 170 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(i)) is amended to read as follows:

"i. (1) After any nuclear incident involving damages that are likely to exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the Secretary or the Commission, as appropriate, shall—

"(A) make a survey of the causes and extent of damage; and

"(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

"(2) Not later than 90 days after any determination by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the President shall submit to the Congress—

"(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii);

"(B) recommendations for additional sources of funds to pay claims exceeding the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied); and

"(C) 1 or more compensation plans, containing a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date.".

SEC. 9. DATE OF EXEMPTION FROM FINANCIAL PROTECTION REQUIREMENT.

Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended by striking "August 1, 1987" each place it appears and inserting "August 1, 1997".

SEC. 10. PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by striking subsection l. and inserting the following:

"l. (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the President shall establish a commission (in this subsection referred to as the 'study commission') in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii).

"(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

"(i) shall be appointed by the President; and

"(ii) shall be representative of a broad range of views and interests.

"(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

"(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

"(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

"(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

"(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

"(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

"(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

"(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

"(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

"(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

"(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

"(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

"(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

"(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986.

"(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.".

SEC. 11. WAIVER OF DEFENSES.

(a) STATUTE OF LIMITATIONS.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in clause (iii) of the first sentence by striking the

following: ", but in no event more than twenty years after the date of the nuclear incident".

(b) APPLICABILITY.—Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended—

(1) by redesignating subparagraphs (a), (b), and (c) as subparagraphs (A), (B), and (C), respectively;

(2) by striking "or" at the end of subparagraphs (A) and (B); and

(3) by inserting after subparagraph (C) the following new subparagraphs:

"(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., "(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

"(F) arises out of, results from, or occurs in the course of, activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of, or research and development on, high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility,".

SEC. 12. JUDICIAL REVIEW OF CLAIMS ARISING OUT OF A NUCLEAR INCIDENT.

(a) CONSOLIDATION OF CLAIMS.—Section 170 n. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(2)) is amended—

(1) in the first sentence—

(A) by striking "an extraordinary nuclear occurrence" each place it appears and inserting "a nuclear incident"; and

(B) by striking "the extraordinary nuclear occurrence" each place it appears and inserting "the nuclear incident";

(2) in the second sentence, by inserting after "court" the first place it appears the following: "(including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1986)"; and

(3) by adding at the end the following new sentence: "In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986, whichever occurs later.".

(b) DEFINITION OF PUBLIC LIABILITY ACTION.—Section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as previously amended by this Act, is further amended by adding at the end the following new subsection:

"gg. The term 'public liability action', as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.".

(c) SPECIAL CASELOAD MANAGEMENT PANEL.—Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended by adding at the end the following new paragraph:

"(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the 'management panel') to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

"(i) the United States district court having jurisdiction under paragraph (2) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

"(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

"(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

"(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

"(C) It shall be the function of each management panel—

"(i) to consolidate related or similar claims for hearing or trial;

"(ii) to establish priorities for the handling of different classes of cases;

"(iii) to assign cases to a particular judge or special master;

"(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

"(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

"(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

"(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.".

(d) LEGAL COSTS.—

(1) COURT AUTHORIZATION.—Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)) is amended by adding at the end the following new paragraph:

"(5)(A) The court may authorize to be paid in accordance with subparagraph (B) such costs of investigating and settling claims and defending suits for damage as it determines to be reasonable and equitable. Funds available to pay such claims under such subparagraph shall be, to the fullest extent practicable, maximized without undue prejudice to any party.

"(B) Any costs authorized under subparagraph (A) shall be paid from the following funds:

"(i) In the case of claims against licensees required to maintain financial protection under subsection b., from the amount of funds available to pay claims under such subsection.

"(ii) In the case of claims against contractors of the Department of Energy indemnified under subsection d., from the amount of funds available to pay claims under such subsection.

"(iii) In the case of claims against nonprofit educational institutions indemnified under subsection k., from the amount of funds available to pay claims under such subsection.".

(2) CONFORMING AMENDMENT.—Section 170 c. and 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c) and 2210(k)) are amended by striking "excluding costs" and "excluding cost" (respectively) and inserting "including the reasonable costs".

SEC. 13. REPORTS TO CONGRESS BY NUCLEAR REGULATORY COMMISSION AND DEPARTMENT OF ENERGY.

Section 170 p. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by striking "shall submit to the Congress by August 1, 1983, a detailed report", and inserting the following: "and the Secretary shall submit to the Congress by August 1, 1993, detailed reports"; and

(3) by adding at the end the following new paragraph:

"(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.".

SEC. 14. LIABILITY OF LESSORS.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended by adding at the end the following new subsection:

"q. No person under a bona fide lease of any utilization or production facility (or part thereof or undivided interest therein) shall be liable by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.".

SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REFERENCES TO NUCLEAR REGULATORY COMMISSION.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "Commission" each place it appears and inserting "Nuclear Regulatory Commission".

(2) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended by striking "Commission" in the first sentence and inserting the following: "Nuclear Regulatory Commission (in this section referred to as the 'Commission')".

(b) REFERENCES TO SECRETARY OF ENERGY.—

(1) Subsections j. and m. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014) are amended by striking "Commission" each place it appears and inserting the following: "Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,".

(2) Section 11 t. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)(2)) is amended by striking "Commission" and inserting "Secretary of Energy".

(3) Section 170 f. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(f)) is amended by inserting after "Commission" the first 2 places it appears the following: "or the Secretary, as appropriate,".

(4) Subsections g., h., j., and m. of section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) are amended by inserting after "Commission" each place it appears the following: "or the Secretary, as appropriate,".

(5) Section 170 n. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)) is amended—

(A) in paragraph (1)—

(i) by striking "Commission" in subparagraph (C) and inserting "Department of Energy"; and

(ii) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate,"; and

(B) in paragraph (2), by inserting after "Commission" the following: "or the Secretary, as appropriate".

(6) Section 170 o. (3) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)(3)) is amended—

(A) by inserting after "Commission" the first place it appears the following: "or the Secretary, as appropriate,"; and

(B) by inserting after "Commission" the second place it appears the following: "or the Secretary, as appropriate".

(c) REFERENCES TO JOINT COMMITTEE ON ATOMIC ENERGY.—Section 170 o. (4) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)(4)) is amended by striking "Joint Committee" and inserting "Congress".

(d) REFERENCES TO REVISED STATUTES.—

(1) Section 170 g. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(g)) is amended by inserting "(41 U.S.C. 5)" after "Statutes".

(2) Section 170 j. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(j)) is amended by striking "section 3679 of the Revised Statutes, as amended" and inserting the following: "sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code".

(e) INTERNAL CROSS-REFERENCES.—

(1) Section 11 q. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(q)) is amended by striking "subsection" each place it appears and inserting "section".

(2) Section 11 t. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(t)) is amended by striking "subsection" each place it appears and inserting "section".

(3) Section 11 w. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(w)) is amended by striking "subsections 170 a., c., and k." and inserting "subsections a., c., and k. of section 170".

(4) Section 170 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(a)) is amended—

(A) in the first sentence, by striking "subsection 2 i. of the Atomic Energy Act of 1954, as amended" and inserting "section 2 i.";

(B) in the first sentence, by striking "subsection 170 b." and inserting "subsection b."; and

(C) in the second sentence, by striking "subsection 170 c." and inserting "subsection c.".

(5) Section 170 k. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(k)) is amended in the first sentence by striking "subsection 170 a." and inserting "subsection a.".

(6) Section 170 n. (1) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(n)(1)) is amended in the last sentence by striking "subsection 170 e." and inserting "subsection e.".

(7) Section 170 o. of the Atomic Energy Act of 1954 (42 U.S.C. 2210(o)) is amended—

(A) in the matter preceding paragraph (1) by striking "subsection 170 e." and inserting "subsection e.";

(B) in paragraph (2), by striking "subparagraph (3) of this subsection (o)" and inserting "paragraph (3)"; and

(C) in paragraph (4), by striking "subsection 170 i. of this Act" and inserting "subsection i.".

SEC. 16. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall become effective on August 1, 1987, and shall be applicable with respect to nuclear incidents occurring on or after such date.

(b) EXCEPTIONS.—

(1) The amendments made by sections 10 and 12 shall become effective on the date of the enactment of this Act.

(2) The amendments made by section 12 shall be applicable with respect to nuclear incidents occurring on any date.

SEC. 17. INFLATION ADJUSTMENT.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210), as amended by section 14 of this Act, is further amended by adding at the end the following new subsection:

"r. (1) The Commission shall adjust, in accordance with paragraph (2), the aggregate amount of financial protection required under subsection b. not less than once during every 5 years.

"(2)(A) The Commission shall make the first such adjustment not later than 5 years after the date of the enactment of the Price-Anderson Amendments Act of 1986, and shall adjust such amount to reflect the aggregate percentage change in the consumer price index since such date of enactment.

"(B) In the case of any subsequent adjustment, such amount shall be adjusted to reflect the aggregate percentage change in consumer price index since the previous adjustment.

"(3) For purposes of this subsection, the term 'consumer price index' means the consumer price index for all urban consumers published by the Secretary of Labor.".

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PURPOSE AND SUMMARY

The purpose of H.R. 3653, as amended and reported by the Committee on Energy and Commerce, is to extend for ten years the Price-Anderson Act, section 170 of the Atomic Energy Act of 1954, and amend provisions establishing public liability for licensees of the Nuclear Regulatory Commission (NRC) and contractors of the

Department of Energy (DOE). The bill, as reported by the Committee on Interior and Insular Affairs, increases the cap on commercial reactor liability from the $660 million provided under current law to $6.5 billion, assuming 101 operating nuclear reactors. In addition, the Interior Committee bill establishes unlimited liability for nuclear waste accidents in place of the existing limit of $500 million, precludes the payment of attorneys' fees from the compensation pool, and strengthens the congressional commitment to review an accident causing damages which exceed the compensation pool.

The Energy and Commerce Committee adopted amendments to the Interior Committee bill which increase the liability of commercial nuclear plants by indexing the cap to inflation and remove liability limits for all DOE contractors, both those handling nuclear waste and operating DOE reactors. The Energy and Commerce Committee also adopted amendments that eliminate the requirement in the Interior Committee bill that utilities carry a minimum of $200 million in primary insurance, permit courts to award reasonable and equitable attorneys' fees out of the compensation pool, and require the DOE to borrow from the Treasury to pay any valid claims against its liability.

Background and Need for Legislation

In 1957, Congress responded to the deterrent to private sector participation in the use of nuclear power by adding the Price-Anderson Act to the Atomic Energy Act of 1954. The purpose of the Price-Anderson Act was to remove the threat of potentially large liability claims in the event of a nuclear accident, and to ensure that funds would be available to provide compensation to the public.

It accomplished this task for commercial nuclear reactors by instituting a two-tier system of insurance with a cap on total liability. The first tier, known as "primary financial protection," requires all operating reactors to carry the maximum available private insurance. The second tier provided for Federal Government indemnity payments up to $500 million. In 1975, Congress replaced this second tier system with a retrospective insurance premium on all operating reactors in the event of an accident at any nuclear power plant that exceeds the primary financial protection. The payment was set at $5 million per reactor. Therefore the second tier layer would increase as more reactors became operational. Today, the maximum amount of private insurance a utility can carry is $160 million, and there are 101 reactors now operating. Therefore the current cap on liability today in the event of a nuclear accident is $665 million ($160 mil. private insurance + ($5 million $\times$ 101 operating reactors)).

With regard to NRC licensees other than large commercial generating facilities, the Act gives the Commission discretion to require such licensees to maintain primary financial protection in any amount or not at all, depending on the relative risk of the activity. In any event, the total liability for all NRC licensees other than commercial reactors is $500 million, and the NRC is directed

to idemnify all contractors for the amount above their required financial protection and up to $500 million. Nonprofit educational institutions, for example, which are licensed to operate reactors are indemnified against claims which exceed $250,000 up to $500 million.

Department of Energy contractors are covered by similar provisions. The Act authorizes, but does not require, DOE to enter into indemnity agreements with its contractors for an amount up to $500 million. While DOE has the authority to require its contractors to carry primary financial protection, the Department had decided not to because the cost of primary protection would be passed on as an expense to DOE. As a result, DOE contractors are indemnified for the total liability, which stands at $500 million under the current Act.

Price-Anderson coverage extends to any person who may be liable for damages from a nuclear accident, not just the licensee or DOE contractor. Thus, any accident, whether it is caused by a manufacturer, an architect-engineer, or an unrelated third party, such as a plane crashing into a reactor, would be covered by the licensee's insurance, the liability limitations and the government indemnities stipulated in the Act. This system enables a victim of a nuclear accident to turn directly to the licensee or DOE contractor for compensation, regardless of whoever is at fault. This system has been referred to as providing "omnibus coverage" since it focuses liability for any accident on the licensee or contractor, even though other parties might be liable under conventional tort law principles.

The accident at Three Mile Island in March 1979 provided the only major test of the Price-Anderson system since 1957. Damages paid to residents living near Three Mile Island totaled approximately $42 million, and the costs of investigating, defending and settling claims have consumed an additional $6 million. All of these expenses have been covered by first-tier insurance. Insured losses and related expenses from all other civilian activities have cost approximately $4.5 million. Payments for claims resulting from DOE or Atomic Energy Commission contractor activity have totaled $271,000.

When Congress adopted the Price-Anderson Act in 1957, it authorized the Atomic Energy Commission (today the NRC and the DOE) to enter into indemnity agreements with its licensees and contractors for a ten-year period, until August 1, 1967. In 1965 and again in 1975, Congress extended this authority for successive ten-year periods. Unless Congress extends this authority, the NRC and DOE's authority to enter into new indemnity agreements or to limit the liability of future licensees will expire on August 1, 1987.

If the authority does expire, the NRC has stated that licenses (including construction permits) granted by August 1, 1987 will continue to be covered by the Price-Anderson Act, but licenses granted after that date will not be subject to the limitation on liability and financial protection requirements in the Act. If DOE's authority to enter into indemnity agreements with its contractors expires, the Department's nuclear operations conducted through private contractors would be adversely affected. Because the Department enters into five-year contracts for most activities, a lapse in the De-

partment's authority to indemnify its contractors could have a profound effect since many contracts for operation of the national laboratories and the Hanford, Washington site expire on September 30, 1987.

The current Act required the NRC and DOE to report to Congress by August 1, 1983 whether the Act should be extended, modified, or repealed. Both agencies recommended to Congress that the Act be renewed; however, both recommended certain changes in the Act. In the NRC Report to Congress, "The Price-Anderson Act—The Third Decade," NUREG-0957, the Commission recommended that the present absolute limitation of liability be replaced with a system which would provide full compensation but with an annual limitation on retrospective payments. The NRC concluded in its Report to Congress that an annual limitation would protect utilities from economic hardship while assuring that all claims were paid. While the NRC did not find that failure to extend the Act would foreclose additional nuclear power plants, it did conclude that expiration of the Act would deny the public prompt and equitably distributed compensation funds in the event of a nuclear incident at a nuclear power plant licensed after August 1, 1987. DOE advised Congress that the indemnity authority in Price-Anderson was vital to the continued and successful operation of the Department's nuclear weapons, production, research and development programs.

While accepting much of what the Committee on Interior and Insular Affairs proposed in reporting H.R. 3653, the Committee adopted several amendments which expand the ability of the public to receive adequate compensation following any nuclear accident. The transportation, storage and disposal of nuclear waste could cause damage to the public if not handled properly. In addition, similar damage to the public could result from accidents at DOE facilities, the safety of which is now under review. For example, the N-Reactor at Hanford has no containment building, which may represent a serious potential safety problem in the future. The Committee amendments address concerns arising out of these and other situations. A summary of the major amendments by the Committee adopted follows.

PRIMARY LAYER

Existing law requires each utility operating a reactor to carry the maximum available private insurance, which is currently $160 million. The Interior Committee stipulated that each operating reactor carry a minimum of $200 million in primary insurance. The Committee adopted an amendment deleting this requirement from the Interior Committee bill and thereby returning to current law.

The Committee recognizes that the nuclear insurance pools now offer utilities only $160 million in private insurance. Accordingly, the extra coverage required by the Interior Committee would force nuclear utilities to set up self-insurance pools or other force nuclear utilities to set up self-insurance pools or other arrangements to provide the additional $40 million of insurance. Given the size and certainty of the secondary layer, the Committee believes that the $200 million requirement did not contribute significantly to the

amount of compensation available and might adversely affect the nuclear insurance markets and the utility's ability to carry primary insurance. Therefore, the Committee deleted this requirement.

SECONDARY LAYER—INFLATION INDEX

The Interior Committee proposed that the current cap on commercial reactor liability of $665 million be increased to $6.5 billion, assuming 101 operating reactors. The Committee accepted a $6.5 billion cap and adopted an amendment which would have the total liability indexed to inflation and adjusted accordingly by the NRC.

Much of the increase in the cap on liability is the result of inflation which has eroded the value of the compensation cap over the past ten years. The Committee chose to index the compensation cap to inflation in order to insure that the liability limit decided on by the Congress is not undermined by the effects of inflation and stays constant in 1986 dollars.

DOE CONTRACTORS

Current law stipulates that the liability of DOE contractors is $500 million. The bill reported by the Interior Committee establishes unlimited liability for DOE nuclear waste contractors, and sets a liability limit for other DOE contractors equal to the maximum cap on commercial reactors (or $6.5 billion). The Committee voted to remove the Interior Committee's liability limit on DOE production facility contractors. Thus, there would be no limit on liability in the event of an accident involving all DOE contractors, both those involved in the nuclear waste program and those managing DOE reactors. The Committee retained the stipulation in H.R. 3653, as reported by the Interior Committee, that the DOE indemnify its contractors against all potential liability.

The Committee has learned recently that some basic safety features and practices standard in commercial nuclear reactors are not in place at some DOE reactors. In addition, the Committee has received testimony indicating that Federal facilities do not necessarily comply with health and safety standards required of civilian reactors. The potential damage from a serious accident at a DOE reactor is as great, if not greater, than the potential damage from a nuclear waste accident or an accident at a commercial reactor. The Committee adopted amendments which remove the liability limit under current law and provides for full compensation for damages to the public from accidents at DOE reactors.

DOE BORROWING AUTHORITY

The Committee adopted an amendment which gives the Secretary of Energy authority to borrow money to meet any valid claims against the Department's liability. This provision insures that any claim resulting from an accident at a DOE reactor, or any claim above $6.5 billion in the event of a nuclear waste accident, will be paid fully and promptly. This provides certainty to the promise of full compensation underlying this section.

THEFT OR SABOTAGE

The Committee adopted an amendment which extends the coverage of the Price-Anderson Act to nuclear material or nuclear waste illegally diverted, other than by an Act of war or by the hostile act of a foreign agent, from a facility or its intended course of transportation. If the illegal material cannot be traced to a licensee or contractor, then the DOE shall provide compensation.

Nearly 750 trucks per year carrying nuclear waste will traverse this Nation, with an additional two hundred or more shipments by rail. Under current law, if the material is diverted from the designated highway, and causes damage, then the victims are without recourse. In the light of the long distances which most nuclear waste will travel in this country, many states will be affected by its transportation, and thus seek maximum protection from the material which is passing through their borders. The amendment adopted by the Committee affords that protection. However, the Committee amendment does not hold any party liable if the damage was caused by an act of war or a foreign terrorist act.

ATTORNEYS' FEES

The Interior Committee's bill prohibits the payment of attorneys fees from the compensation pool or private insurance provided by large commercial nuclear reactors. The Committee adopted an amendment which enables courts to use their reasonable and equitable powers in awarding attorneys fees from the compensation pool or insurance.

The Committee believes that the limited compensation pool should be primarily dedicated to paying valid claims. In order to insure that the ability of victims to receive compensation is not unduly compromised, the bill directs the courts to use their equitable powers to pay attorney fees without unduly prejudicing the rights of victims to receive compensation.

PRECAUTIONARY EVACUATIONS

The bill reported by the Committee on Interior and Insular Affairs contains a resonableness test to be applied to a precautionary evacuation ordered by a state or local official. The Committee adopted an amendment which deletes this requirement and clarifies what costs associated with a precautionary evacuation are reimbursable, and defines further the triggering event of a valid precautionary evacuation.

The Committee observes that no reasonableness test is required for precautionary evacuations from large commercial reactors. The Committee saw no merit in the proposal to impose a retrospective reasonableness test on the decisions made by state and local officials to initiate an evacuation in the event that there is an imminent danger of bodily injury or property damage from nuclear material. However, the Committee does believe that such officials should be reimbursed only for those reasonable additional costs incurred as a result of the evacuation.

HEARINGS

The Subcommittee held a hearing on H.R. 3653, as reported by the Committee on Interior and Insular Affairs, on July 17, 1986. Testimony was received from the NRC, DOE, and from six witnesses representing fourteen organizations.

COMMITTEE CONSIDERATION

On July 30, 1986, the Subcommittee on Energy Conservation and Power met in open session and ordered reported the bill with no recommendation, H.R. 3653, as amended by the Subcommittee, by a vote of 9-7, a quorum being present. On August 12, 1986, the Committee met in open session and ordered reported the bill, H.R. 3653, as amended by the Committee, by a vote of 24-18.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee held oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no budget effect for fiscal year 1987.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 19, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3653, the Price-Anderson Act Amendments of 1986, as ordered reported by the House Committee on Energy and Commerce, August 12, 1986. This bill would increase the government's potential financial liability in the event of certain types of nuclear accidents. Because there is no basis for predicting the number and magnitude of such incidents, CBO cannot estimate the cost of the increased liability. CBO estimates that the bill's provision for a new Presidential Commission on Catastrophic Nuclear Accidents would cost approximately $500,000 per year, for fiscal years 1987 and 1988. No significant costs to the federal government would result from other provisions of H.R. 3653.

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Bill purpose

H.R. 3653 extends and revises the Price-Anderson Act, which governs the liability and indemnification of federal licensees and contractors in the event of a nuclear accident. Under this law, the Nuclear Regulatory Commission (NRC) regulates and indemnifies licensees, and the Department of Energy (DOE) indemnifies its contractors.

This bill raises the maximum liability for a nuclear accident involving commercial power plants from $0.7 billion to an estimated $6.5 billion per incident. The bill also provides for compensation of liability claims beyond $6.5 billion for incidents involving federal contractors. The bill sets the liability limit according to the amount of financial protection that the NRC requires commercial licensees to maintain from primary liability insurance ($160 million per plant) and from deferred premiums levied on all other operating plants (up to $63 million per reactor, as determined by the NRC). The maximum deferred premium of $63 million is limited to $10 million per year for each nuclear incident. H.R. 3653 also includes insructions that the NRC shall either request an appropriation to meet any deferred premium requirements for which the commission is liable, or borrow the required funds from the Treasury. Any funds appropriated or borrowed to meet NRC liability requirements shall be repaid to the Treasury from amounts made available by future deferred premiums, with interest.

The increase in the liability for accidents involving commercial plants would not affect the federal government's financial liability, because it would be covered by an increase in the amount of private financial protection that the licensees must maintain. On the other hand, because the government fully indemnifies federal contactors, the increase in liability for incidents involving the contractors would be borne by the federal government. The liability and indemnification of other licensees would remain at current levels.

H.R. 3653 explicitly makes federal indemnification applicable to certain activities or incidents. For example, it confirms that DOE must indemnify contractors involved with its nuclear waste programs. Claims related to the Nuclear Waste Fund are to be paid directly from the fund. The bill provides for compensation of claims regarding DOE contractors for liability greater than the maximum amount of financial protection required of commercial plant licensees. The bill also provides for the reimbursement of the cost of precautionary evacuations resulting from incidents involving contractors indemnified by the federal government under certain conditions.

The bill, as reported by the House Committee on Energy and Commerce, contains several provisions not included in previous versions of the bill. The Energy and Commerce Committee bill contains a provision for the compensation of public liability claims arising out of or in connection with nuclear incidents resulting from the theft or sabotage of radioactive material. The bill also exempts those who lease nuclear material utilization or production facilities from any legal liability arising out of or resulting from a nuclear incident. The Energy and Commerce Committee bill also provides guidance to the courts on the award of legal costs associat-

ed with nuclear incidents. Finally, the bill includes a provision for inflation adjustments for financial protection that are required under the act. The inflation adjustments are to be made at least once every five years.

Budget impact

The provisions affecting the government's financial liability would not increase federal spending in fiscal years 1986 through 1991 unless a nuclear incident involving federal indemnification occurs in those years. If such an accident were to occur, enactment of the bill would increase the government's potential financial liability by at least $6.0 billion per incident for incidents currently covered by the Price-Anderson Act, and by at least $6.5 billion per incident for incidents not indemnified by the government under existing law but covered under H.R. 3653. This estimate assumes that commercial licensees would be required to maintain $160 million in primary liability insurance, and that the approximately 100 reactors with operating licenses would be subject to maximum deferred premiums.

The bill does not limit federal liability to $6.5 billion. Instead, procedures are established regarding claims beyond the $6.5 billion level for incidents that involve DOE contractors. The government's liability ultimately would depend on the NRC's policies regarding commercial licensees' financial protection, and could increase in the future as a result of any increase in the number of operating reactors. Raising the liability and indemnification limit is not expected to affect the government's costs for claims currently pending before the courts and DOE, because the amount of alleged damages per incident does not exceed the liability limit in existing law.

H.R. 3653 requires that the President establish a Commission on Catastrophic Nuclear Accidents within 90 days after enactment of the bill. The commission shall consist of 7 to 11 members who must conduct a study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the aggregate liability specified by H.R. 3653. A final report containing the commission's recommendations must be submitted to the Congress within two years of enactment of the bill. The estimated costs of establishing this Presidential commission is $500,000 per year, for fiscal years 1987 and 1988. The commission shall terminate two months after the required final report is submitted.

Other provisions in the bill are expected to have no significant impact on federal outays.

No costs would be incurred by state or local governments as a result of enactment of this bill.

Previous CBO estimates

CBO has prepared cost estimates for H.R. 3653, as ordered reported by the House Committee on Interior and Insular Affairs and the House Committee on Science and Technology. The Interior Committee bill was ordered reported on May 21, 1986, and the CBO cost estimate was provided on June 6, 1986. The Science and Technology Committee bill was ordered reported on July 29, 1986, with a CBO cost estimate provided on August 1, 1986. Both bills established commercial licensees' liability limits of $6.5 billion per nu-

clear incident, the same limit established in the Energy and Commerce Committee bill. The Energy and Commerce Committee bill, however, does not raise the primary liability insurance amount from $160 million to $200 million, as do the previously reported House bills. In addition, unlike the previously reported bills, the Energy and Commerce Committee bill does not limit federal liability for DOE's contractors to $6.5 billion.

On May 9, 1986, CBO prepared a cost estimate for S. 1225, as ordered reported by the Senate Committee on Energy and Natural Resources on April 23, 1986. The Senate Energy Committee's bill establishes a liability limit for nuclear accidents of $2.2 billion per incident, as opposed to the estimated $6.5 billion limit in H.R. 3653.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee believes there will be no significant inflationary impact.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

Section 1 provides that the short title of H.R. 3653 is "Price-Anderson Amendments of 1986."

SECTION 2—FINANCIAL PROTECTION

Section 2 amends section 170 b. of the Atomic Energy Act of 1954, which sets financial protection requirements for NRC licensees, to expand the amount of financial protection which large commercial nuclear power reactors must provide in the event of a nuclear accident, and for other purposes.

The Committee adopted an amendment which deleted a requirement in H.R. 3653, as reported by the Committee on Interior and Insular Affairs, that large commercial power reactors licensed by the NRC (nuclear power plants with a rated capacity of 100,000 kilowatts or more) maintain at least $200 million of primary financial portection, even if the maximum amount of financial protection available is less than $200 million. In adopting this amendment, the bill lets stand the requirement in current law that each power reactor maintain primary financial protection equal to the maximum amount of insurance available at reasonable cost and on reasonable terms, which is currently $160 million. The Committee expects the maximum amount of insurance available in the primary tier to increase over time in accord with the conditions in the nuclear insurance pools.

Section 2(b) directs the NRC to increase the maximum deferred premium that may be charged each large commercial reactor fol-

lowing any nuclear incident from the current level of $5 million to $63 million, but limits the annual payment with respect to any nuclear incident in any one year to $10 million per reactor. The Committee also adopted an amendment, discussed further in section 7 and section 17, that requires the NRC to adjust periodically the aggregate liability for inflation.

The Committee accepted the deferred premium increase adopted by the Interior Committee because it believes that utilities can manage a $10 million annual assessment. In addition, the Committee finds that the current level of compensation available from the deferred premiums, $505 million, may fall below a level necessary to provide fair and prompt compensation to the public in the event of a nuclear accident.

The Committee adopted an amendment which deleted the provision in H.R. 3653, as reported by the Committee on Interior and Insular Affairs, that precluded the use of the first and second tier compensation funds to pay for the costs of investigating, settling and defending claims arising out of a nuclear incident. Section 12 of the bill provides for the court to use its power of equity in awarding legal costs.

Section 2(c) establishes procedures for the NRC to follow in the event that it is necessary to borrow funds from the Treasury to compensate victims of a nuclear incident before deferred premiums are collected from licensees. The bill provides this authority so that the full amount of financial protection provided by section 170 b. is available to pay claims promptly after an accident, even though the deferred premiums may not be collected for up to seven years. The bill requires that any funds borrowed from the Treasury be repaid with interest from deferred premiums subsequently collected. The Committee adopted an amendment which requires NRC to use its authority to obtain reimbursement first from a defaulted licensee before seeking reimbursement from other licensees. In addition, the amendment provides that in such a case the annual limitation of $10 million per reactor shall apply to the reimbursement.

SECTION 3—EXTENSION OF NRC'S INDEMNIFICATION AUTHORITY

Section 3 extends the NRC's authority under section 170 c. of the Act to enter into indemnification agreements with its licensees for an additional ten years until August 1, 1997.

SECTION 4—DOE CONTRACTOR INDEMNIFICATION AGREEMENTS

This section incorporates substantial changes in section 170 d. of the current Act, which authorizes DOE to enter into indemnification agreements with its contractors involved in nuclear activities that present a risk of public liability for a substantial nuclear incident. In addition, Section 4 extends the DOE's authority to indemnify its contractors under this subsection for an additional ten years until August 1, 1997.

Section 170 d. of the current Act is amended to require the DOE to indemnify its contractors engaged in activities that involve the risk of public liability for a nuclear incident or precautionary evacuation. This section adds a new subparagraph (B) which clarifies the application of the Price-Anderson Act to DOE activities involv-

ing wastes and states that indemnification agreements entered into by the Secretary shall include contracts involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste. These activities include, but are not limited to, the Waste Isolation Pilot Project under section 213 of Public Law 96-164 or the construction or operation of any storage or disposal site or facility under the Nuclear Waste Policy Act of 1982.

The Committee adopted an amendment which provides that in any agreement of indemnification entered into by the Secretary, the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection (n)(1) of the current Act (pertaining to an extraordinary nuclear occurrence) shall be incorporated in the indemnification agreements and shall be made applicable to nuclear incidents involving the release of radioactive material arising out of the Department's nuclear waste activities.

Current law limits liability for all DOE contractors to $500 million. This section, as reported by the Interior Committee, also provides for full compensation to the public in the event of an accident involving DOE nuclear waste activities. The Committee adopted an amendment which extends the principles of full compensation to the public to any accident involving DOE production and utilization facilities. Consequently, the bill establishes unlimited liability for the Federal Government for public liability claims arising out of, or in connection with, all DOE contractual activities that involve the risk of public liability for any nuclear incident.

With respect to nuclear waste produced as a result of the civilian production of electricity, payment for valid claims would be made from the Nuclear Waste Fund established by Section 302 of the Nuclear Waste Policy Act, up to an amount not to exceed the maximum amount of financial protection required for large commercial reactors under section 170 b. of the amended Act. Today, with 101 operating reactors, the maximum amount payable from the Nuclear Waste Fund would be $6.523 billion.

With respect to claims arising out of nuclear waste activities for which liability exceeds the amount of funds available from the Nuclear Waste Fund, for claims arising out of activities involving radioactive waste not produced by a commercial reactor (such as defense waste), for claims arising out of the construction or operation of production or utilization facilities, and for other activities under contract that involve the risk of public liability for a nuclear incident, the bill establishes new authority for the Secretary to meet these claims if Congress has not taken action to provide adequate funds.

The Committee adopted an amendment that directs the Secretary to compensate the public liability claims arising out of any of the activities outlined above by borrowing money from the Treasury, unless an alternative compensation plan submitted by the President to Congress has been implemented. This provision guarantees that valid public liability claims arising out of any of these activities will be met promptly and fully. If the President and Congress have not agreed upon an alternative compensation plan, then this provision gives the Secretary authority to borrow money di-

rectly from the Treasury, and the authority is not subject to available appropriations. This provision, in tandem with the provision for payments from the Nuclear Waste Fund, will insure that all valid claims arising from DOE nuclear activities will be paid promptly and fully.

Paragraphs (2) and (3) of the new section 170 d. increase the amount of Federal indemnity for public liability claims arising out of or in connection with DOE contractual activities from the current $500 million to the full extent of the potential aggregate liability of the contractor. Therefore, the Federal indemnity for all DOE contractual activities that involve the risk of public liability for any nuclear incident would be unlimited.

Paragraphs (4), (5), and (6) consist of unchanged provisions in the existing Act.

The Committee adopted an amendment which deleted paragraph (7) from H.R. 3653, as reported by the Committee on Interior and Insular Affairs, which provided for a test of reasonableness where state and local officials have ordered a precautionary evacuation arising from or in connection with DOE contractual activities. This provision was inconsistent with Section 6 of the bill which provides for no reasonableness test for precautionary evacuations in the instance of potential accidents at commercial reactors, thus the Committee finds that the actions of state and local officials authorized to make evacuation decisions shall not be subject to a reasonableness test in these circumstances.

Section 4(b)(1) amends the definition of "person" in subsection 11 s. of the current Act to provide coverage under the Price-Anderson Act to nuclear waste activities undertaken directly by the Secretary, in addition to activities undertaken by contract. The Committee adopted an amendment that also provides coverage of activities undertaken directly by the Secretary that involve utilization and production facilities. Consequently, under section 11 s., as amended, all activities that involve the risk of public liability for any nuclear incident undertaken directly by the Secretary, or his employees, or by DOE contractors, are subject to the coverage of the Price-Anderson Act and the provisions of this subsection.

Section 4(b)(2) and section 4(c) make conforming changes to "person indemnified" and provide definitions of nuclear waste terms.

SECTION 5—THEFT OR SABOTAGE

The Committee adopted this new section to H.R. 3653, as reported by the Committee on Interior and Insular Affairs, to insure that the coverage of the Price-Anderson Act extends to any nuclear material that is illegally diverted from the facility site or intended transportation route. This section further amends section 170 d. of the current Act to add a new paragraph (7) that directs the Secretary to compensate public liability claims arising out of or in connection with a nuclear incident if the nuclear material or nuclear waste is illegally diverted from its place of confinement and cannot be traced to a NRC licensee and is not the result of an Act of war or a hostile act by a foreign agent. If the material is illegally diverted from its intended place of confinement and can be traced to

a NRC licensee, then the relevant provisions of the Price-Anderson Act apply

The Committee adopted this amendment because it believes that the public should be afforded the protection of the Price-Anderson Act in the event that nuclear material or nuclear waste has been diverted from its course of transportation and causes public liability. During the last renewal debate of the Price-Anderson Act in 1974, Congress approved an amendment to extend Price-Anderson coverage to harm caused by theft or sabotage of nuclear materials, but this provision was eliminated by the Conference Committee and in its place a study was required. The study submitted to Congress indicated that while the Price-Anderson Act applies to some acts of theft or sabotage, such as those that occur on the intended course of transportation or at the facility, the Price-Anderson Act does not apply if the material has been illegally diverted from the facility or from its intended course of transportation.

Under current law, if a truck carrying nuclear material is diverted off the highway, and causes damage, then the victims are without recourse. Given the large number of trucks and rail cars that will be traversing the country carrying nuclear wastes, this amendment is necessary for the protection of all the people, but is especially important to those citizens living in the corridor states. According to DOE, nearly 750 trucks per year will be carrying nuclear waste, and many of these trucks will be covering long distances moving east to west. In addition, more than 200 rail cars will be traversing the Nation with nuclear waste casks. If these trucks or rail cars are somehow diverted, other than by an Act of war or the hostile act of a foreign agent, and cause damage, then the victims should be afforded the protection of the Price-Anderson Act.

This section also amends section 11 j. of the current Act by amending the definition of "extraordinary nuclear occurrences" and "nuclear incident" to include any such material that is illegally diverted from the facility site or intended transportation route.

SECTION 6—PRECAUTIONARY EVACUATIONS

This section amends the definition of "public liability" in section 11 w. of the current Act to include legal liability arising out of or resulting from a precautionary evacuation as well as a nuclear incident. The Committee adopted an amendment that provides for all reasonable additional costs incurred by a state or political subdivision of a state in the course of responding to precautionary evacuation to be compensable. To give an example, if a policeman had to work 12 hours, including four hours overtime, due to a precautionary evacuation, then the policeman's base pay would not constitute an additional cost, but the overtime pay could be a reasonable additional cost that should be reimbursed.

This section also amends section 11, as amended, of the Atomic Energy Act by adding a new subsection (ff) that defines "precautionary evacuation" as an evacuation of the public within a specified area near a nuclear facility or a transportation route if the evacuation is the result of an event that, while not classified as a nuclear incident, poses imminent danger of bodily injury or property damage from the radiological properties of nuclear material or

nuclear waste and causes an evacuation. In addition, the bill stipulates that the evacuation must be initiated by an official of a state or political subdivision of a state authorized to initiate such an evacuation.

SECTION 7—AGGREGATE LIABILITY

This section establishes the aggregate liability for a single nuclear incident at a large commercial nuclear reactor. The bill states that the aggregate liability for a single nuclear incident shall not exceed the maximum amount of financial protection required of large commercial reactors. Assuming there are 101 operating reactors, this provision establishes a limitation on liability of $6.523 billion (First tier ($160 million) + Second tier ($63 million x 101 operating reactors)). The Committee adopted an amendment which directs the NRC to adjust the limitation on liability for inflation. The amendment adopted by the Committee adds a new section 17 to the Interior Committee bill and adds a new section 170 r. to the Atomic Energy Act.

The Committee adopted this inflation adjustment amendment out of concern for the erosive effect of inflation on the available compensation pool. Even in a scenario of moderate inflation, the decline in the value of the available compensation caused by inflation is unacceptable. If inflation averages four percent annually, after ten years the $6.5 billion pool established today would be decreased by nearly one-third, to $4.5 billion in constant 1986 dollars. Thus, the Committee believes that the aggregate amount of financial protection required of large commercial nuclear reactors should stay constant in 1986 dollars. Thus, the Committee believes that the aggregate amount of financial protection required of large commercial nuclear reactors should stay constant in 1986 dollars. Therefore, the NRC is given authority to adjust the aggregate amount in order to accomplish this goal. The NRC is not, however, given authority to adjust the annual maximum premium of $10 million.

The Committee adopted an amendment which permits the payment of reasonable costs of investigating, settling and defending claims, as awarded by the court consistent with its reasonable and equitable powers contained in section 12 of the bill, from first and second tier funds provided by large commercial nuclear reactors. It is the intent of the Committee that the payments for litigation costs from the private financial protection shall not prejudice the ability of any victim to collect damages from the private financial protection system required of large commercial facilities under subsection b.

This section also provides for congressional review of any nuclear incident that exceeds the cap set for large commercial reactors, or in the event of a nuclear incident arising out of nuclear waste activity, any accident that exceeds the amount of funds available from the Nuclear Waste Fund. The bill provides for Congress to review thoroughly the particular incident and to take whatever action is determined to be necessary to provide full and prompt compensation to the public for all public liability claims. Moreover, the bill clarifies that the limitation on liability contained in subsec-

tion e. (1) shall not be construed to preclude a future Congress from enacting a measure imposing additional revenue requirements upon NRC licensees.

SECTION 8—COMPENSATION PLANS

This section amends section 170 i. of the current Act by establishing the requirements and procedures for congressional review of any nuclear incident that appears likely to exceed the limitation on liability set forth in section 170 e. of the Atomic Energy Act, as amended. This section directs the NRC or the DOE, whichever is appropriate, to report to the Congress and the Members representing the affected areas on the causes and extent of damage to the public, and to recommend additional sources of funds to pay claims exceeding the limitations on liability. This reporting requirement is designed to give Congress the requisite information to construct a compensation plan which provides full and prompt compensation in the event that damages resulting from an accident at a large commercial reactor exceeds the liability limit established in subsection e. (1).

SECTION 9—INDEMNIFICATION OF NONPROFIT EDUCATIONAL INSTITUTIONS

This section extends NRC's authority under section 170 k. of the Atomic Energy Act to indemnify certain nonprofit educational institutions for an additional ten years until August 1, 1997.

SECTION 10—PRESIDENTIAL STUDY COMMISSION

This section amends section 170 l. by striking the obsolete provisions providing indemnification for the nuclear ship *Savannah*, and inserting in lieu thereof new provisions requiring the President to establish a commission to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the limitation on liability in subsection b., or in the event of an accident involving nuclear waste, that exceeds the amount of funds available from the Nuclear Waste Fund. The study commission shall submit a final report to the Congress setting forth recommendations for any changes necessary for the equitable, prompt and efficient resolution and payment of all valid damage claims. The bill stipulates that the final report shall be submitted within two years after enactment of this bill.

SECTION 11—WAIVER OF DEFENSES

This section amends section 170 n. (1) of the Atomic Energy Act by eliminating the requirement that a state statute of limitations be waived only if suit is filed within twenty years after the nuclear incident. Thus, the test for waiver of a state statute of limitations is that a suit must be initiated within three years of the date the claimant knew or reasonably could have known of the injury. In addition, this section expands the application of the waiver-of-defenses provision to include extraordinary nuclear occurrences involving radioactive waste or nuclear materials licensees indemnified by the NRC.

SECTION 12—JUDICIAL REVIEW OF NUCLEAR INCIDENT CLAIMS

This section amends section 170 n.(2) of the current Act to allow courts to consolidate claims arising out of all nuclear incidents; current law only provides courts with such power if a nuclear incident is determined to constitute an "extraordinary nuclear occurrence" (ENO). This change facilitates the equitable treatment of cases arising out of any accident, whether it has been designated an ENO or not. In addition, this section amends section 11 of the Atomic Energy Act, as amended, by adding a new subsection defining "public liability action" as an action arising under section 170, and further provides that the substantive rules governing such action shall be derived from the law of the State in which the accident occurs, unless such law is inconsistent with the Price-Anderson Act.

The Committee adopted an amendment which authorizes the court to award payment for costs of investigating and settling claims and defending suits for damage as the courts determines to be reasonable and equitable. This amendment will offer protection to victims while insuring that reasonable litigation costs associated with handling claims will be paid. To give an example, if an accident at a large commercial reactor causes $5 billion in damages and there is $6.5 billion available in the first and second tier financial protection, then sufficient funds exist to meet all valid claims and it is expected that the court would authorize payments of reasonable legal fees. However, if there is an accident which causes $8 billion in damages and there is $6.5 billion available in the first and second tier financial protection, then the Committee expects the court to use its reasonable and equitable powers to insure that victims of a nuclear accident receive the maximum possible compensation, and that the amount of money paid to lawyers would be secondary to the interest of maximizing payments to victims.

SECTION 13—REPORTS TO CONGRESS

This section amends section 170 p. of the Atomic Energy Act to require NRC and DOE to report to the Congress by August 1, 1993 on the need for continuation or modification of the Price-Anderson Act.

SECTION 14—LIABILITY OF LESSORS

This new section adopted by the Committee adds a new subsection 170 q. to the Atomic Energy Act and clarifies what parties are liable under the Price-Anderson Act. It provides that no person under a bona fide lease of a large commercial reactor, or part thereof, shall be liable by reason of an interest as a lessor in the large commercial reactor for any public liability arising out of or resulting from a nuclear incident relating to such facility, unless such facility is in the actual possession and control of such person at the time the nuclear incident occurred.

It was brought to the attention of the Committee that in one case, Public Service of New Mexico was attempting to sell its minority share in the Palo Verde nuclear power plant, owned in majority part and operated by Arizona Public Service, and then lease

its share back. It was further represented to the Committee that potential equity investors were concerned that the Price-Anderson Amendments Act of 1986 might expose them, as well as the licensees, to liability. The intent of this provision is to make explicit that the lessor party in a bona fide sale-leaseback arrangment shall not be liable under the Price-Anderson Act by reason of an interest as a lessor in a nuclear facility. While it is clear in current law that the lessor of a facility is not licensed by the NRC, and is therefore not subject to the liability provision of the Price-Anderson Act, this amendment further clarifies that provision.

SECTION 15—TECHNICAL AND CONFORMING AMENDMENTS

This section makes technical and conforming amendments to the Atomic Energy Act.

SECTION 16—EFFECTIVE DATE

This section stipulates the effective date for the amendments to the Price-Anderson Act made by this bill will be August 1, 1987, except for the amendments made by sections 10 and 12, which shall become effective on the date of enactment of this bill, and the amendments made by section 12 which shall be applicable to any nuclear incident occurring on any date.

SECTION 17—INFLATION ADJUSTMENT

This new section adopted by the Committee adds a new subsection 170 r. to the Atomic Energy Act which directs the Nuclear Regulatory Commission to adjust for inflation the aggregate amount of financial protection required of civilian commercial reactors. The Committee adopted this amendment out of recognition of the erosive effect inflation could have on the available compensation pool. Even if there is moderate inflation of four percent annually, after ten years the $6.5 billion pool, assuming 101 operating reactors, would be decreased by nearly one-third to $4.5 billion in real 1986 dollars. Consequently, the Committee believes that the aggregate amount of financial protection required of large commercial nuclear reactors should stay constant in 1986 dollars. Therefore, the NRC is given authority to adjust the aggregate amount in order to accomplish this goal. The NRC is not given authority to adjust the maximum annual assessment of $10 million.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ATOMIC ENERGY ACT OF 1954

* * * * * * *

SEC. 11. DEFINITION.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

a. * * *

* * * * * * *

j. The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement *(including any such material that is illegally diverted from its intended place of confinement)* in amounts offsite, or causing radiation levels offsite, which the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* determines to be substantial, and which the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or the "contract location" as defined in the applicable [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* indemnity agreement, entered into pursuant to section 170.

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m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the [Commission] *Nuclear Regulatory Commission or the Secretary of Energy, as appropriate,* with respect to any obligation undertaken by it in an indemnity agreements entered into pursuant to section 170.

* * * * * * *

q. The term "nuclear incident" means any occurrence including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material *(including such material that is illegally diverted from its intended place of confinement): Provided, however,* That as the term is used in [subsection] *section* 170 l., it shall include any such occurrence outside the United States: *And provided further,* That as the term is used in [subsection] *section* 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further,* That as the term is used in [subsection] *section* 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive,

or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used on connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the [Commission] *Nuclear Regulatory Commission* to another person licensed by the [Commission.] *Nuclear Regulatory Commission.*

* * * * * * *

s. The term "person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing. *For purposes of activities that the Secretary of Energy is authorized or directed to undertake, under this Act or any other law, that involve the risk of pubic liability for a substantial nuclear incident or precautionary evacuation, including the construction or operation of production or utilization facilities, the storage, disposal, or transportation of, or research and devclopment on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall, to the extent that such activities are not undertaken by contract, be considered as if the Secretary were a contractor with whom an indemnity agreement has been entered into under section 170 d.*

t. The term "person indemnified" means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in [subsection] *section* 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person, *as defined in subsection s.*, who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the [Commission] *Secretary of Energy* or any project to which indemnification under the provisions of [subsection] *section* 170 d., has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

* * * * * * *

w. The term "public liability" means any legal liability arising out of or resulting from a nuclear incident *or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a*

nuclear incident or a precautionary evacuation), except: (i) claims under State or Federal workmen's compensation acts of employees of persons indemnified who are employed at the site of and in connection with the activity where the nuclear incident occurs; (ii) claims arising out of an act of war; and (iii) whenever used in subsections [170] a., c., and k. *of section 170,* claims for loss of, or damage to, or loss of use of property which is located at the site of and used in connection with the licensed activity where the nuclear incident occurs. "Public liability" also includes damage to property of persons indemnified: *Provided,* That such property is covered under the terms of the financial protection required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

* * * * * * *

dd. The terms "high-level radioactive waste" and "spent nuclear fuel" have the meanings given such terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

ee. The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, and that are in concentrations greater than 10 nanocuries per gram, or in such other concentrations as the Nuclear Regulatory Commission may prescribe to protect the public health and safety.

ff. The term "precautionary evacuation" means an evacuation of the public within a specified area near a nuclear facility, or the transportation route in the case of an accident involving transportation of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste to or from a production or utilization facility, if the evacuation is—

(1) the result of any event that is not classified as a nuclear incident but that poses imminent danger of bodily injury or property damage from the radiological properties of source material, special nuclear material, byproduct material, high-level radioactive waste, spent nuclear fuel, or transuranic waste, and causes an evacuation; and

(2) initiated by an official of a State or a political subdivision of a State, who is authorized by State law to initiate such an evacuation.

gg. The term "public liability action", as used in section 170, means any suit asserting public liability. A public liability action shall be deemed to be an action arising under section 170, and the substantive rules for decision in such action shall be derived from the law of the State in which the nuclear incident involved occurs, unless such law is inconsistent with the provisions of such section.

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in [subsection 2 i. of the Atomic Energy Act of 1954, as amended,] *section 2 i,* have as a condition of the license a requirement that

the licensee have and maintain financial protection of such type and in such amounts as the [Commission] *Nuclear Regulatory Commission (in this section referred to as the "Commission")* in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection [170] b. to cover public liability claims. Whenever such financial protection is required it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection [170] c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

b. *(1)* The amount of *primary* financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: [(1)] *(A)* the cost and terms of private insurance, [(2)] *(B)* the type, size, and location of the licensed activity and other factors pertaining to the hazard, and [(3)] *(C)* the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of *primary* financial protection required shall be the maxmimum amount available at reasonable cost and on reasonable terms from private sources *(excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection).* Such *primary* financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have an maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such *primary* financial protection: *And provided further,* [That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection] *That the standard deferred premium that may be charged following any nuclear incident under such a plan shall not be more than $63,000,000 (but not more than $10,000,000 in any 1 year) for each facility required to maintain the maximum amount of primary financial protection: And provided further,* That the amount which may be

charged a licensee following any nuclear incident shall not exceed the licensee's pro rate share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. [The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard.]

(2) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(3)(A) In the event that, the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1), or the Commission is required to make reinsurance or guaranteed payments under paragraph (2), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretrary of the Treasury.

(B)(i) Except as provided in clause (ii), any funds appropriated pursuant to subparagrpah (A)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premiums, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated are made available.

(ii) No amount shall be repaid under clause (i) from standard deferred premium amounts until the Commission has exhausted any applicable remedies under paragraph (2) and has been able to

obtain full reimbursement for any funds appropriated under subparagraph (A)(i).

(C)(i) Except as provided in clause (ii), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premiums. Such obligations shall bear interest at a rate determined by the Commission by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(ii) No redemption under clause (i) of obligations issued under subparagraph (A)(ii) shall be made from standard premium amounts until the Commission has exhausted any applicable remedies under paragraph (2) and has been unable to obtain full reimbursement for any such obligations.

c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, [1987], *1977*, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, [excluding] *including the reasonable* costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, [1987], *1997*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1987]. *1997.*

[d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1987, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising

out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, exluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further,* That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indeminified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.]

d. (1)(A) In addition to any other authority the Secretary of Energy (in this subsection referred to as the "Secretary") may have, the Secretary shall, until August 1, 1997, enter into agreements of indemnification with contractors of the Department of Energy for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities that involve the risk of public liability for a substantial nuclear incident or precautionary evacuation.

(B)(i)(I) The requirement in subparagraph (A) to enter into agreements of indemnification with contractors shall include contracts entered into by the Secretary for the purpose of carrying out—

(aa) such activities as the Secretary is authorized to undertake, under this Act or any other law, involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste;

(bb) activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164; or

(cc) the construction or operation of any storage or disposal site or facility.

(II) For all activities described in subclause (I), indemnification under subparagraph (A) shall be the exclusive means of indemnification under this section.

(III) In any such agreement of indemnification, the provisions relating to the waiver of any issue or defense as to charitable or governmental immunity authorized in subsection n. (1) to be incorporated in agreements of indemnification, shall also be made applicable to nuclear incidents involving the release of radioactive material arising out of the activities described in subclause (I).

(ii) For the purpose of compensating public liability claims, as defined in section 11 w., arising out of activities involving the storage or disposal of spent nuclear fuel, high-level radioactive waste, or transuranic waste produced as a result of the generation of electricity in a civilian nuclear power reactor, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility, the Secretary shall make available funds, in an amount not to exceed the maximum amount of financial protection required of licensees under subsection a., from the Nuclear Waste Fund established in section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222). Any liability greater than such amount shall be compensated in accordance with clause (iii).

(iii)(I) The Secretary shall compensate the public liability claims described in subclause (II) unless an alternative compensation plan submitted by the President to Congress under subsection i. (2)(C) is implemented.

(II) The public liability claims referred to in subclause (I) are as follows:

(aa) Claims arising out of activities described in subparagraph (A).

(bb) Claims arising out of activities (other than those described in clause (ii)) involving the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste.

(cc) Claims arising out of activities described in clause (ii) for which the public liability exceeds the maximum amount of financial protection required of licensees under subsection a.

(dd) Claims arising out of activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96–164.

(ee) Claims arising out of the construction or operation of any storage or disposal site or facility.

(III) For purposes of paying the compensation described in subclause (I), the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the month preceding the issuance of the obligations under this clause. The Secretary of the Treasury shall purchase any issued obligation, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purpose for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any obligation required by the Secretary of the Treasury under this clause. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under clause shall be treated as public debt transactions of the United States.

(iv)(I) In the event of a nuclear incident tht arises out of, results from, or occurs in the course of, activities undertaken by the Secretary in connection with the storage, disposal, or transportation of, or research and development on, spent nuclear fuel, high-level radioactive waste, or transuranic waste, activities authorized to be carried out under the Waste Isolation Pilot Project under section 213 of Public Law 96-164, or the construction or operation of any storage or disposal site or facility, the Secretary shall determine the extent to which such incident involves materials produced as a result of the generation of electricity in a civilian nuclear power reactor, or materials resulting from other activities, or both, and based upon such determination, render a decision as to the appropriate source of funds, in accordance with clauses (ii) and (iii), to be used in compensating pubic liability claims.

(II) The funds to be used to compensate public liability claims under this subparagraph shall be provided in a manner and in such amounts as are appropriate to ensure that the funds necessary to compensate such claims are shared on a pro rata basis, in accordance with the determination rendered under subclause (I). The decision on the sources of such funds shall be final and conclusive. Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the Secretary shall promulgate standards and regulations for making the determinations required under this subparagraph.

(2) In agreements of indemnification entered into under paragraph (1), the Secretary may require the contractor to provide and maintain financial protection of such a type and in such amounts as the Secretary shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, to the full extent of the potential aggregate liability of the contractor, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. This amount of indemnity shall be reduced by the amount of the financial protection that the Secretary requires of the contractor.

(3) Notwithstanding paragraph (2), if the maximum amount of financial protection required of licensees under subsection a. is increased by the Commission, the amount of indemnity, together with any financial protection required of the contractor, shall at all times remain equal to or greater than the maximum amount of financial protection required of licensees under subsection a. The amount of indemnity provided contractors under this subsection shall not, at any time, be reduced in the event that the maximum amount of financial protection required of licensees is reduced.

(4) In the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Secretary under this subsection shall not exceed $100,000,000.

(5) The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Secretary.

(6) A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the

underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

(7) The Secretary shall compensate public liability claims arising out of or in connection with a nuclear incident (other than a nuclear incident arising out of an Act of war or a hostile act by a foreign agent) resulting from source material, special nuclear material, by-product material, high-level radioactive waste, and spent nuclear fuel that—

(A) is illegally diverted from its intended place of confinement; and

(B) cannot be traced to a licensee of the Commission required to maintain financial protection under this section.

[e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided,* That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.]

e. (1) The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall be as follows:

(A) In the case of facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, such liability shall not exceed the maximum amount of financial protection required of such facilities under subsection b.

(B) In the case of all other licensees of the Commission required to maintain financial protection under this section such liability shall not exceed—

(i) $500,000,000, together with the amount of financial protection required of the licensee; or

(ii) if the amount of financial protection required of the licensee exceeds $60,000,000, $560,000,000 or the amount of financial protection required of the licensee, whichever amount is more.

(2) In the event of a nuclear incident involving damages in excess of the amount of aggregate liability under paragraph (1), and in the event of a nuclear incident involving persons indemnified under subsection d. (1)(B) in which claims exceed the maximum amount of funds available under subsection d. (1)(B)(ii), the Congress will thoroughly review the particular incident in accordance with subsection i. and take whatever action is determined to be necessary (including approval of appropriate compensation plans and appropriation of funds) to provide full and prompt compensation to the public for all public liability claims resulting from a disaster of such magnitude.

(3) No provision of paragraph (1) may be construed to preclude the Congress from enacting a revenue measure, applicable to licensees of the Commission required to maintain financial protection pursuant to subsection b., to fund any action undertaken pursuant to paragraph (2).

(4) With respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000, together with the amount of financial protection required of the contractor.

f. The Commission *or the Secretary, as appropriate,* is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided,* That the Commission *or the Secretary, as appropriate,* is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

g. In administering the provisions of this section, the Commission *or the Secretary, as appropriate,* shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission *or the Secretary, as appropriate,* may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes (*41 U.S.C. 5*), as amended, upon a showing by the Commission *or the Secretary, as appropriate,* that advertising is made not reasonably practicable and advance payments may be made.

h. The agreement of indemnification may contain such terms as the Commission *or the Secretary, as appropriate,* deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission *or the Secretary, as appropriate,* makes a determination that the United States will probably be required to make indemnity payments under this section, the Commissioner *or the Secretary, as appropriate,* shall collaborate with

any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission *or the Secretary, as appropriate,* shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement shall not include expenses in connection with the claim incurred by the person indemnified.

[i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.]

i. (1) After any nuclear incident involving damages that are likely to exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the Secretary or the Commission, as appropriate, shall—

(A) make a survey of the causes and extent of damage; and

(B) expeditiously submit a report setting forth the results of such survey to the Congress, to the Representatives of the affected districts, to the Senators of the affected States, and (except for information that will cause serious damage to the national defense of the United States) to the public, to the parties involved, and to the courts.

(2) Not later, than 90 days after any determinatin by a court, pursuant to subsection o., that the public liability from a single nuclear incident may exceed the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), the President shall submit to the Congress—

(A) an estimate of the aggregate dollar value of personal injuries and property damage that arises from the nuclear incident and exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii);

(B) recommendations for additional sources of funds to pay claims exceeding the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii), which recommendations shall consider a broad range of possible sources of funds (including possible revenue measures on the sector of the economy, or on any other class, to which such revenue measures might be applied); and

(C) 1 or more compensation plans, containing a recommendation or recommendations as to the relief to be provided, including any recommendations that funds be allocated or set aside

for the payment of claims that may arise as a result of latent injuries that may not be discovered until a later date.

j. In administering the provisions of this section, the Commission *or the Secretary, as appropriate,* may make contracts in advance of appropriations and incur obligations without regard to [section 3679 of the Revised Statutes, as amended] *sections 1341, 1342, 1349, 1350, and 1351, and subchapter II of chapter 15, of title 31, United States Code.*

k. With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection [170] a. With respect to licenses issued between August 30, 1954, and August 1, [1987,] *1997,* for which the Commission grants such exemption:

(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 [excluding cost] *including the reasonable costs* of investigating and settling claims and defending suits for damage;

(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, [1987,] *1997,* the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1987.] *1997.*

[l. The Commission is authorized until August 1, 1977, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the "nuclear ship Savannah." In any such agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above

the amount of the financial protection required in the amount of $500,000,000 excluding costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.]

l. (1) Not later than 90 days after the date of the enactment of the Price-Anderson Amendments Act of 1986, the President shall establish a commission (in this subsection referred to as the "study commission") in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1) or the amount of funds available under subsection d. (1)(B)(ii).

(2)(A) The study commission shall consist of not less than 7 and not more than 11 members, who—

(i) shall be appointed by the President; and

(ii) shall be representative of a broad range of views and interests.

(B) The members of the study commission shall be appointed in a manner that ensures that not more than a mere majority of the members are of the same political party.

(C) Each member of the study commission shall hold office until the termination of the study commission, but may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(D) Any vacancy in the study commission shall be filled in the manner in which the original appointment was made.

(E) The President shall designate 1 of the members of the study commission as chairperson, to serve at the pleasure of the President.

(3) The study commission shall conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate liability under subsection e. (1), and shall submit to the Congress a final report setting forth—

(A) recommendations for any changes in the laws and rules governing the liability or civil procedures that are necessary for the equitable, prompt, and efficient resolution and payment of all valid damage claims, including the advisability of adjudicating public liability claims through an administrative agency instead of the judicial system;

(B) recommendations for any standards or procedures that are necessary to establish priorities for the hearing, resolution, and payment of claims when awards are likely to exceed the amount of funds available within a specific time period; and

(C) recommendations for any special standards or procedures necessary to decide and pay claims for latent injuries caused by the nuclear incident.

(4)(A) The chairperson of the study commission may appoint and fix the compensation of a staff of such persons as may be necessary to discharge the responsibilities of the study commission, subject to the applicable provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and title 5, United States Code.

(B) To the extent permitted by law and requested by the chairperson of the study commission, the Administrator of General Services

shall provide the study commission with necessary administrative services, facilities, and support on a reimbursable basis.

(C) The Attorney General, the Secretary of Health and Human Services, and the Director of the Federal Emergency Management Agency shall, to the extent permitted by law and subject to the availability of funds, provide the study commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the functions of the study commission.

(D) The study commission may request any Executive agency to furnish such information, advice, or assistance as it determines to be necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the chairperson of the study commission.

(E) Each member of the study commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the study commission. Each member may also receive travel expenses, including per diem in lieu of subsistence under sections 5702 and 5703 of title 5, United States Code.

(F) The functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.) that are applicable to the study commission, except the function of reporting annually to the Congress, shall be performed by the Administrator of General Services.

(5) The final report required in paragraph (3) shall be submitted to the Congress not later than the expiration of the 2-year period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986.

(6) The study commission shall terminate upon the expiration of the 2-month period beginning on the date on which the final report required in paragraph (3) is submitted.

m. The Commission *or the Secretary, as appropriate,* is authorized to enter agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission, *or the Secretary, as appropriate,* and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission *or the Secretary, as appropriate,* shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

[(a)**]** *(A)* arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, **[**or**]**

[(b)**]** *(B)* arises out of or results from or occurs in the course of transportation of source material, byproduct material, or

special nuclear material to or from a production or utilization facility, [or]

[(c)] *(C)* during the course of the contract activity arises out of or results from the possession, operation, or use by a [Commission] *Department of Energy* contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

(D) arises out of, results from, or occurs in the course of, the construction, possession, or operation of any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a.,

(E) arises out of, results from, or occurs in the course of, transportation of source material, byproduct material, or special nuclear material to or from any facility licensed under section 53, 63, or 81, for which the Commission has imposed as a condition of the license a requirement that the licensee have and maintain financial protection under subsection a., or

(F) arises out of, results from, or occurs in the course of, activities undertaken by the Secretary, including activities undertaken by contract, in connection with the storage or disposal of, or research and development on, high-level radioactive waste, spent nuclear fuel, or transuranic waste, including the transportation of such materials to a storage or disposal site or facility and the construction or operation of any such site or facility,

the Commission *or the Secretary, as appropriate,* may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause therof[, but in no event more than twenty years after the date of the nuclear incident]. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the

terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection [170]e.

(2) With respect to any public liability action arising out of or resulting from [an extraordinary nuclear occurrence,] *a nuclear incident,* the United States district court in the district where [the extraordinary nuclear occurrence] *the nuclear incident* takes place, or in the case of [an extraordinary nuclear occurrence] *a nuclear incident* taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission *or the Secretary, as appropriate,* any such action pending in any State court *(including any such action pending on the date of the enactment of the Price-Anderson Amendments Act of 1986)* or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States. *In any action that is or becomes removable pursuant to this paragraph, a petition for removal shall be filed within the period provided in section 1446 of title 28, United States Code, or within the 30-day period beginning on the date of the enactment of the Price-Anderson Amendments Act of 1986, whichever occurs later.*

(3)(A) Following any nuclear incident, the chief judge of the United States district court having jurisdiction under paragraph (2) with respect to public liability actions (or the judicial council of the judicial circuit in which the nuclear incident occurs) may appoint a special caseload management panel (in this paragraph referred to as the "management panel") to coordinate and assign (but not necessarily hear themselves) cases arising out of the nuclear incident, if—

(i) the United States district court having jurisdiction under paragraph (2) determines that the aggregate amount of public liability is likely to exceed the amount of primary financial protection available under subsection b. (or an equivalent amount in the case of a contractor indemnified under subsection d.); or

(ii) the chief judge of the United States district court (or the judicial council of the judicial circuit) determines that cases arising out of the nuclear incident will have an unusual impact on the work of the court.

(B)(i) Each management panel shall consist only of members who are United States district judges or circuit judges.

(ii) Members of a management panel may include any United States district judge or circuit judge of another district court or court of appeals, if the chief judge of such other district court or court of appeals consents to such assignment.

(C) It shall be the function of each management panel—

(i) to consolidate related or similar claims for hearing or trial;

(ii) to establish priorities for the handling of different classes of cases;

(iii) to assign cases to a particular judge or special master;

(iv) to appoint special masters to hear particular types of cases, or particular elements or procedural steps of cases;

(v) to promulgate special rules of court, not inconsistent with the Federal Rules of Civil Procedure, to expedite cases or allow more equitable consideration of claims;

(vi) to implement such other measures, consistent with existing law and the Federal Rules of Civil Procedure, as will encourage the equitable, prompt, and efficient resolution of cases arising out of the nuclear incident; and

(vii) to assemble and submit to the President such data, available to the court, as may be useful in estimating the aggregate damages from the nuclear incident.

o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection [170] e.:

(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to [subparagraph (3) of this subsection (o);] *paragraph (3);* and

(3) The Commission *or the Secretary, as appropriate,* shall and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission *or the Secretary, as appropriate,* any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.

(4) The Commission shall, within ninety days after a court shall have made such determination, deliver to the [Joint

Committee] *Congress* a supplement to the report prepared in accordance with [subsection 170 i. of this Act] *subsection i,* setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.

(5)(A) The court may authorize to be paid in accordance with subparagraph (B) such costs of investigating and settling claims and defending suits for damage as it determines to be reasonable and equitable. Funds available to pay such claims under such subparagraph shall be, to the fullest extent practicable, maximized without undue prejudice to any party.

(B) Any costs authorized under subparagraph (A) shall be paid from the following funds:

(i) In the case of claims against licensees required to maintain financial protection under subsection b., from the amount of funds available to pay claims under such subsection.

(ii) In the case of claims against contractors of the Department of Energy indemnified under subsection d., from the amount of funds available to pay claims under such subsection.

(iii) In the case of claims against nonprofit educational institutions indemnified under subsection k., from the amount of funds available to pay claims under such subsection.

p. *(1)* The Commission [shall submit to the Congress by August 1, 1983, a detailed report] *and the Secretary shall submit to the Congress by August 1, 1993, detailed reports* concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

(2) Not later than April 1 of each year, the Commission and the Secretary shall each submit an annual report to the Congress setting forth the activities under this section during the preceding calendar year.

q. No person under a bona fide lease of any utilization or production facility (or party thereof or undivided interest therein), shall be liable, by reason of an interest as lessor of such production or utilization facility, for any legal liability arising out of or resulting from a nuclear incident resulting from such facility, unless such facility is in the actual possession and control of such person at the time of the nuclear incident giving rise to such legal liability.

r. (1) The Commission shall adjust, in accordance with paragraph (2), the aggregate amount of financial protection required under subsection b. not less than once during every 5 years.

(2)(A) The Commission shall make the first such adjustment not later than 5 years after the date of the enactment of the Price-Anderson Amendments Act of 1986, and shall adjust such amount to reflect the aggregate percentage change in the consumer price index since such date of enactment.

(B) In the case of any subsequent adjustment, such amount shall be adjusted to reflect the aggregate percentage change in consumer price index since the previous adjustment.

(3) For purposes of this subsection, the term "consumer price index" means the consumer price index for all urban consumers published by the Secretary of Labor.

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DISSENTING VIEWS ON H.R. 3653, PRICE-ANDERSON AMENDMENTS ACT

The Price-Anderson Act was enacted in 1957 in order to achieve two main objectives. The first was to induce private investment in nuclear power. The second was to assure that there would be a large pool of funds to provide prompt and orderly compensation to members of the public in the event damages were incurred from a nuclear accident.

These objectives were achieved by limiting liability for damages caused by a nuclear accident to a high but not unreasonable amount and by channeling all liability for such an accident to the owner of the accident-causing reactor. In the event of an accident exceeding the limitation on liability, the Act provided that Congress would review the situation and provide compensation as appropriate to the particular circumstances involved. Thus, the Price-Anderson Act established a system for efficiently and expeditiously handling the most probable cases.

The past thirty years have demonstrated that Price-Anderson has worked well in these most probable cases. Approximately $53 million has been paid, $42 million of which was paid for claims arising out of the 1979 Three Mile Island accident and $271,000 of which was paid for claims arising out of the contractor nuclear activities of the Department of Energy. Moreover, the Act treats the public much better than it would be treated in the courts under today's tort law. No matter who is responsible for an accident, Price-Anderson channels financial liability to the reactor owner. In the event of a nuclear accident involving substantial off-site contamination and damage, it requires defendants to waive defenses to which they would otherwise be entitled. It contains a Federal statute of limitations which supersedes shorter State statutes and takes the uncertainty out of determining in which court to bring suit. All of these things leave the public better off than under ordinary tort law.

It is because the Price-Anderson Act is carefully crafted to achieve a balancing of the interests of the nuclear industry, the public, and the Federal Government that we are so concerned about the changes made to it by the Committee on Energy and Commerce. The Committee has adopted an aggregate limitation on liability ($6.5 billion) which is so high as to be unreasonable and which is in all probability illusory. In the event of an accident causing $6.5 billion in damages, it is doubtful that nuclear utilities would be able to pay a $63 million per reactor retroactive assessment and thus that the public would have access to a $6.5 billion fund to pay claims. This is because every nuclear plant in the country would probably be shut down in the event of an accident of this magnitude. If so, nuclear utilities would be required to buy replacement power, the availability and cost of which we can only specu-

late. At the same time, it is difficult to conceive that lending institutions would lend money to nuclear utilities in the aftermath of such an accident.

In choosing a $63 million retroactive assessment, the Committee considered the earnings of a healthy nuclear utility industry. Instead, the Committee should have concluded that the industry would be in a very precarious financial situation in the event of an accident causing $6.5 billion in damages. Rather than adopt an unreasonably high retroactive assessment, it would be better for Congress to adopt a reasonable retroactive assessment and review the actual situation in the event of an accident exceeding the limitation on liability. Among the options available to Congress at that time would be the option of raising additional money through a tax on NRC licensees. Such a tax could be tailored to meet existing circumstances.

Moreover, it is important to note that the retroactive assessment approved by the Committee constitutes a twelve-fold increase in the size of the assessment adopted by Congress in 1975. Such an increase is unwarranted, especially in light of the fact that U.S. nuclear plants have gotten safer since the Three Mile Island accident. We believe that adoption of such an unreasonably high aggregate limitation on liability ignores this improvement and sends the public the message that Congress believes that an accident causing $6.5 billion in damages is probable. We believe that such an accident is extremely unlikely in this country and that ratepayers should not be forced to pay the increased costs to utilities (e.g., the higher cost of borrowing money) that such a large aggregate limitation on liability entails.

Not only did the Committee adopt an unreasonably high aggregate limitation on liability, it approved an amendment to index this amount so that it increases automatically with inflation. By the end of the 10-year period covered by this extension, the overall limitation on liability would be $10.6 billion, assuming 101 reactors and 5 percent inflation. The retroactive assessment would have increased from $63 million to $103.7 million per reactor. While we are not opposed to inflation indexing, we believe that such indexing should be applied to a reasonable limitation on liability and that the indexing should also take into consideration the state of knowledge about the safety of nuclear technology. Additionally, we believe that indexing of the aggregate limitation on liability should accompany an extension of the Act longer than the 10-year extension contemplated by the Committee.

The Committee's actions with respect to Price-Anderson coverage for DOE contractor nuclear activities are particularly irresponsible in this time of budgetary constraints. The Committee removed any limitation on liability for DOE contractor activities, subjecting both civilian and defense activities to unlimited liability. Unlimited liability is antithetical to the concept of Price-Anderson which imposes a limitation on liability in exchange for making a large sum of money quickly available to claimants with very few legal and administrative hurdles. Moreover, such unlimited liability is equivalent to tempting tort lawyers and their clients with the "deep pocket" of the U.S. Treasury.

The Committee's adoption of an amendment requiring the Secretary of Energy to pay claims in excess of $6.5 billion from the Treasury without regard to appropriations if Congress does not act on compensation plans proposed by the President is reckless. This provision constitutes an appropriation in an authorization and as such should be subject to a point of order on the House Floor. Moreover, it contravenes the Anti-Deficiency Act, which is a fundamental underpinning of sound financial practice on the part of the Federal Government, and should not be breached. While the Interior Committee adopted unlimited liability for DOE waste contractor activities, a concept we do not endorse, at least payment of claims is made from the Nuclear Waste Fund subject to the appropriations process.

Finally, the Committee's elimination of the applicability of the Federal Tort Claims Act to claims against DOE employees engaged in nuclear activities constitutes a major erosion of the Federal Tort Claims Act and one which is strongly opposed by the Department of Justice. The provision was adopted to respond to the unlikely possibility that on some occasion a DOE employee, rather than a DOE contractor, might engage in some nuclear activity resulting in the release of radiation. Presumably this might occur during a strike or some other unusual situation. The action taken by the Committee goes far beyond this unusual situation and invites suit under Price-Anderson when it would not otherwise be possible or would be more difficult under the Federal Tort Claims Act.

In sum, the Committee's actions go far beyond fine tuning and updating the Price-Anderson Act. Instead, they wreak havoc with the careful balancing of rights and responsibilities of the nuclear industry, the public, and the Federal Government. We strongly dissent from the Committee's changes to the Act and oppose enactment of this legislation in the form reported by the Committee.

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BILL DANNEMEYER.
BOB WHITTAKER.
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ADDITIONAL VIEWS OF MESSRS. ECKART OF OHIO, MARKEY, SWIFT, SIKORSKI, AND WYDEN ON H.R. 3653, PRICE-ANDERSON AMENDMENTS OF 1986

This bill, H.R. 3653, puts before the Committee the unthinkable: How do we treat victims of a serious nuclear accident? Should the victims have to cover their own damages? Should nuclear utilities have to pay? Should the American taxpayer cover the liability of a private industry? All of these questions were raised by H.R. 3653, but, unfortunately, the Committee answered these questions by shielding nuclear utilities from liability and forcing either victims or taxpayers to pay. The bill shifts the burden of an accident from nuclear operators, where it belongs, to either the victims of the accident, or the American taxpayer. We believe that this approach is not only misguided and unfair but runs counter to the goal of improving safety at nuclear plants.

The amendment in the nature of a substitute which was offered by Mr. Eckart in Subcommittee and in Committee provides full compensation to victims of any nuclear accident and protects utilities from economic disaster. This amendment would guarantee that all valid claims from a nuclear accident were paid, but in the case of a commercial reactor, it would enable utilities to pay the claims over time. Instead, the Committee adopted a plan which provides full protection to utilities and exposes victims of commercial reactor accidents to economic disaster. We believe that the public deserves to be fully compensated in the event of any nuclear accident, whether it is caused by nuclear waste, a Department of Energy (DOE) reactor, or a commercial reactor.

It is important to note the origin of this amendment. In 1983, pursuant to the requirement of the Act, the NRC sent to Congress NUREG-0957, "The Price-Anderson Act—The Third Decade." This document contains the Commission unanimous recommendations on how the Price-Anderson Act should be revised. In supporting the Eckart substitute, we echo the conclusion of the NRC's 1983 Report to Congress, which states that Congress should construct a system to "ensure the availability of sufficient insurance funds * * * to pay public liability claims even for high-consequence accidents." The substitute also incorporated the NRC concern that "this approach should avoid imposing potentially catastrophic losses on utilities."

The Eckart amendment would have guaranteed that all victims of nuclear accidents, whether the accident results from a commercial reactor, a DOE reactor, or nuclear waste, would receive full compensation. With regard to nuclear reactor licensees, the amendment adopts the approach recommended in 1983 by the NRC. The amendment states that in the event of a severe accident, each operating reactor shall be assessed a retrospective premium up to $10 million per year until all valid claims are paid.

The key feature of this proposal is that regardless of the amount of damages, utilities will never have to pay more than $10 million per year. In addition, NRC is given borrowing authority so that all valid claims will be paid immediately. Therefore, this amendment tracks closely the 1983 NRC Report to Congress that Price-Anderson should provide full and prompt compensation to the public but the annual retrospective payment from a utility should be limited to $10 million per reactor.

On the DOE contractor side, the substitute is similar to H.R. 3653, which we supported and the Committee adopted. First, in the event of a nuclear waste accident, it allows for full compensation from the federal government with the initial claims being paid from the Nuclear Waste Fund. Second, the Eckart amendment adopted the same approach for all DOE contractors, not just waste contractors. We are satisfied that the Committee adopted an amendment offered by Mr. Wyden to expand the coverage of unlimited liability to include DOE reactors.

Making parties financially accountable for their actions has been very successful in other arenas for affecting industry behavior, and we believe this principle should be extended to nuclear operations. The Eckart substitute would apply this system to the nuclear industry by holding parties liable in the case of gross negligence. We point to other major environmental laws such as * * * which have limits on liability but waive these restrictions in the case of gross negligence. Holding harmless a party in the case of gross negligence or willful disregard to the public safety is bad policy and should not be tolerated in any renewal legislation.

D.E. ECKART.
ED MARKEY.
AL SWIFT.
GERRY SIKORSKI.
RON WYDEN.

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